

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of:

M. ELLIS FRATER, JR.

Former Director and Institution-
Affiliated Party of
Eureka Homestead Society

New Orleans, Louisiana

Order No.: DAL-95-31

Dated: September 28, 1995

STIPULATION AND CONSENT TO THE ENTRY OF
AN ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed M. Ellis Frater, Jr. ("FRATER"), former director of Eureka Homestead Society, New Orleans, Louisiana ("Eureka Homestead" or the "Institution"), OTS No. 03193, that OTS is of the opinion that grounds exist to initiate an administrative civil money penalty proceeding against FRATER pursuant to Section 8(i)(2) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(i)(2)¹; and

WHEREAS, FRATER desires to cooperate with OTS and to avoid the time and expense of such administrative proceeding and, without admitting and specifically disputing the statements and conclusions of the OTS, in accordance with Rule 408 of the Federal Rules of Evidence and without trial or hearing, but admitting the jurisdictional statements and conclusions in paragraph 1 below, hereby stipulates and agrees to the following terms:

1. All references to the U.S.C. are as amended.

1. Jurisdiction.

(a) Eureka Homestead is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b) and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) FRATER, as a former director of the Institution, is an "institution-affiliated party" of the Institution as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal Banking agency" to maintain an enforcement proceeding against a savings association and/or its institution-affiliated parties. The Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue orders of civil money penalty assessment on behalf of the OTS where the respondent has consented to the entry of the order. Therefore, FRATER is subject to the jurisdiction of the OTS to initiate and maintain a civil money penalty proceeding against him pursuant to Section 8(i)(2) of the FDIA, 12 U.S.C. § 1818(i)(2).

2. OTS Findings of Fact. The OTS finds as follows:

(a) By no later than June 1990, FRATER, as a director of Eureka Homestead, was aware that the OTS February 13, 1990 Report of Examination had directed the Institution to, among other things, develop a business plan and investment plan. Eureka Homestead's

board of directors ("board") made written representation to OTS that a comprehensive business plan and investment policy were in the process of being formulated.

(b) On or about June 18, 1991, FRATER placed his signature, as a director of Eureka Homestead, on a document prepared by a brokerage firm which, among other things, referenced that the board had undertaken a review of Eureka Homestead's "trading activity to date", including the results, transaction costs and the attendant risks associated with such trading activities. The document further represented that any prior trading activity was ratified by the board and was within the Institution's investment limitations and objectives. None of the board actions referenced in the document executed by FRATER ever took place.

(c) FRATER subsequently became aware that the OTS October 7, 1991 Report of Examination of Eureka Homestead had deemed the Institution's investment policy as deficient and not in compliance with applicable regulations. The Report further reflected that the Institution's management was not complying with board policies and procedures, GAAP and OTS regulations.

(d) FRATER subsequently became aware that the OTS October 26, 1992 Report of Examination of Eureka Homestead had again reflected regulatory deficiencies with the Institution's investment policy and noncompliance with Thrift Bulletin 52. The Report further reflected that despite the prior October 1991 OTS Report of Examination's criticisms of the the Institution's investment policy, the board had apparently not reviewed the policy since July 15, 1991.

(e) On or about January 26, 1993, FRATER again placed his signature, as a director of Eureka Homestead, on a document prepared by the same brokerage firm referenced in subparagraph 2(b) above, which, among other things, referenced that a review had been undertaken of Eureka Homestead's "trading activity to date", including the results, transaction costs and the attendant risks associated with such trading activities. The document further represented that any prior trading activity was ratified by the board and was within the Institution's investment limitations and objectives. None of the board actions referenced in the document executed by FRATER ever took place.

(f) During the course of the October 18, 1993 OTS Report of Examination of Eureka Homestead, OTS examiners determined that the Institution's president had engaged in securities trading activities that had resulted in significant unrecognized losses to Eureka Homestead.

(g) OTS further finds that from June 1990 through October 1993, the board failed to adopt sufficient internal controls to ensure that: the Institution was operating in a safe and sound manner; the Institution's books and records were accurate and reliable; and, directives and requests for corrective actions received from financial institution regulatory agencies were being addressed and undertaken by Institution management.

(h) OTS further finds that at all times relevant hereto, FRATER was aware that the establishment or maintenance of a securities trading account by Eureka Homestead was not an authorized investment activity. Notwithstanding this knowledge, on

at least the two occasions described above, FRATER, while acting as a director, executed documentation that facilitated unauthorized securities trading activities on behalf of Eureka Homestead. Based upon the foregoing, the OTS concludes that FRATER engaged in unsafe and unsound practices and breaches of his fiduciary duty of due care.

3. Consent. FRATER consents to the issuance by the OTS of the accompanying Order of Assessment of Civil Money Penalty ("Order"). FRATER further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under Section 8(i)(2) of the FDIA, 12 U.S.C. § 1818(i)(2). Upon its issuance by the Regional Director or designee for the Midwest Region, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. Waivers. FRATER waives the following:

(a) the right to a Notice of Assessment of Civil Money Penalty provided by Section 8(i)(2) of the FDIA, 12 U.S.C. § 1818(i)(2);

(b) the right to an administrative hearing of the OTS's charges against him as provided by Section 8(i)(2)(H) of the FDIA, 12 U.S.C. § 1818(i)(2)(H);

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and

(d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

6. Indemnification. FRATER shall neither cause or permit the Institution (or any successor or subsidiary thereof) to incur, directly or indirectly, any expense (including but not limited to legal or other professional expenses) incurred relative to the negotiation and issuance of the Order and the payment of any civil money penalty, nor obtain any indemnification (or other reimbursement) from the Institution (or any successor or subsidiary thereof) with respect to such amounts. Any payments received by or on behalf of FRATER in connection with this action shall be returned to the Institution.

7. Other Actions Not Affected.

(a) FRATER acknowledges and agrees that this proceeding, the assessment or payment of the penalty contemplated as part of the resolution thereof, and FRATER's consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only. By signing this document, FRATER agrees that he will not assert the assessment or payment of this penalty as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

(b) FRATER further acknowledges and agrees that his consent to the entry of the Order does not resolve, release, discharge, compromise, settle, dismiss, or in any way affect any claim or

proceeding which may be or has been brought by Eureka Homestead, including its successor(s) in interest.

(c) This Stipulation and Consent to the Entry of an Order of Assessment of Civil Money Penalty ("Stipulation"), the Order and the payment by FRATER of any monies or providing any other financial relief as contemplated by the Order, does not release discharge, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of FRATER that arise pursuant to this action or otherwise, and that may be or have been brought by any other governmental entity other than the OTS.

(d) FRATER further acknowledges and agrees that the obligation to pay civil money penalties pursuant to this Stipulation and the Order shall not be dischargeable in bankruptcy under any circumstances.

WHEREFORE, FRATER executes this Stipulation and Consent to the Entry of an Order of Assessment of Civil Money Penalty, intending to be legally bound hereby.

By:

Accepted by:

Office of Thrift Supervision

M. Ellis Frater, Jr.
M. Ellis Frater, Jr.

Frederick R. Casteel
Frederick R. Casteel
Regional Director
Midwest Region

Date: September 22, 1995

Date: 9-28-95

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M. ELLIS FRATER, JR.

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Eureka Homestead Society

New Orleans, Louisiana

Order No.: DAL-95-31

Dated: September 28, 1995

ORDER OF ASSESSMENT OF CIVIL MONEY PENALTY

WHEREAS, M. Ellis Frater, Jr. ("FRATER") has executed a Stipulation and Consent to the Entry of an Order of Assessment of Civil Money Penalty ("Stipulation"); and

WHEREAS, FRATER, in the Stipulation, has consented to the issuance of this Order of Assessment of Civil Money Penalty ("Order") pursuant to Section 8(i)(2) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(i)(2)¹;

NOW THEREFORE, IT IS ORDERED that within 21 days of the effective date of this Order, FRATER shall pay to the OTS the sum of Fifteen Thousand Dollars (\$15,000.00) by tendering a cashier's or certified check made payable to the Treasurer of the United States. The check shall be sent to Scott W. Liggett, Senior Attorney, Office of Thrift Supervision, 8500 West 110th Street, Suite 400, Overland Park, Kansas 66210.

OFFICE OF THRIFT SUPERVISION

By: Frederick R. Casteel
Frederick R. Casteel
Regional Director
Midwest Region

1. All references to the U.S.C. are as amended.